

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEPHEN HARRISON COCKBURN,

v.

NATIONAL BOARD OF MEDICAL  
EXAMINERS.

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:  
:

CIVIL ACTION No. 10-1407-JS

**DECLARATION OF CATHERINE FARMER**

**EXHIBITS 21-23**

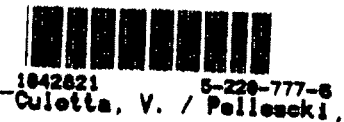
# **EXHIBIT 21**

## NEUROBEHAVIORAL ASSOCIATES

Specializing in Attention, Learning, and Neurodevelopmental Differences

Vincent P. Culotta, Ph.D. ABN  
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Neuropsychological Consultation & Evaluation  
Educational Consultation  
Referral Services



### NEUROPSYCHOLOGICAL EVALUATION CONFIDENTIAL

**NAME:** Stephen Harris Cockburn **USMLE ID #**5-220-777-6  
**DATE OF BIRTH:**  
**DATES OF EVALUATION:** 9/30/09, 10/5/2009 & 10/8/2009  
**AGE:** 28 years  
**HANDEDNESS:** Right  
**EDUCATION:** 2<sup>nd</sup> year – Howard University Medical School  
**PRIMARY CARE PHYSICIAN:** Gary Bean, M.D.

#### PROCEDURES:

Wechsler Adult Intelligence Scale – Fourth (WAIS-IV); Woodcock-Johnson III (Normative Update) Tests of Achievement; Nelson-Denny Reading Test, Form G; Lateral Dominance Examination; Grooved Pegboard Test; Rey Complex Figure Test; California Verbal Learning Test – Second Edition (CVLT-II); Category Fluency Test; Controlled Oral Word Association Test; Trailmaking Test, Parts A and B; Wechsler Memory Scale – Fourth Edition (WMS-4) selected subtests; Stroop Color and Word Test; Paced Auditory Serial Addition Test (PASAT); Barkley's ADHD Symptoms Checklist; Beck Depression Inventory – Second Edition (BDI-II); History; Interview; Review of Record.

#### DSM-IV TR DIAGNOSTIC FORMULATION:

**AXIS I** 314.00 Attention-Deficit/Hyperactivity Disorder – Predominantly Inattentive Type  
315.00 Reading Disorder  
**AXIS II** No diagnosis  
**AXIS III** No contributing medical condition identified  
**AXIS IV** Psychosocial stressors – mild  
**AXIS V** Current GAF = 60

#### BACKGROUND AND REASON FOR REFERRAL:

Stephen Harris Cockburn is a 28-year-old single African-American young man referred for neuropsychological assessment subsequent to longstanding concerns regarding academic productivity and a prior diagnosis of Reading Disorder and Disorder of Written Expression. Mr. Cockburn is currently a second year medical student at Howard University and is preparing to take Step 1 of the United States Medical Licensing Examination (USMLE). He is seeking accommodations in accord with the Americans with Disabilities Act secondary to the functional impact of his learning difficulties.

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Mr. Cockburn applied for accommodations through the National Board of Medical Examiners and was denied. The reason for the denial, indicated in a letter signed by Catherine Farmer, Psy.D., indicated that despite his difficulties, documentation did not demonstrate current substantial limitations in major life activity compared to most people. Dr. Farmer's letter recognized that learning difficulties are typically recognized as developmental in nature and that no early school records were provided to demonstrate such impairment with respect to reading and writing skills.

Dr. Farmer's letter raises an important consideration regarding the developmental nature of learning and cognitive disorders. In my review of Mr. Cockburn's record, which includes specific documentation beginning in kindergarten, there is substantial and persistent evidence to indicate significant deficits in attention, organization, work completion, and distractibility. These deficits are so pervasive in reading through his record that, on multiple occasions, teachers requested parental conferences, screenings, and the implementation of a number of interventions. These records will be reviewed in the following paragraphs.

**Review of Educational Records from Kindergarten through Grade 6:**  
**Wake County Public Schools System – Kindergarten Progress Report**  
**Northridge Elementary School – Teacher: Hoops – 1986-1987**

Teacher comments included the following:

- *Stephen continues to be one of the politest children I've ever met.*
- *He needs to become more responsible for his work and aware of his surroundings.*
- *I would continue to work with him on becoming more aware of his surroundings and becoming more independently responsible for his work.*

**Northridge Elementary School – Grade 1 – 1987-1988**

- *Stephen is capable of doing better work.*
- *He has to be constantly reminded to finish all assignments.*
- *Stephen has made some improvement in his work habits.*

**Northridge Elementary School – Grade 2 – 1988-1989**

Stephen received "Needs Improvement" in the following categories:

- Completes class assignments
- Uses time wisely
- Stays on task
- Works well independently

Narrative comments included:

- *Stephen is constantly distracted in school and needs to improve his work habits.*
- *Stephen continues to daydream in class.*
- *He doesn't complete class work on time.*
- *Stephen has difficulty getting his work completed.*

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- *He is frequently daydreaming.*

Northridge Elementary School – Grade 3 – 1989-1990

Stephen earned "Needs Improvement" in the following skills:

- Handwriting
- Preparation and organization for daily activities
- Completes assignments on time
- Uses time wisely
- Stays on task
- Is attentive and listens carefully
- Follows directions
- Proofreads work

Narrative comments included:

- *He needs to stay on task so that he can complete his assignments.*
- *He did not do his Christmas report about Jamaica.*
- *Stephen must make the decision to apply himself and do what he is capable of doing in the different academic areas.*
- *Please continue to work with Stephen.*

Northridge Elementary School – Grade 4 – 1990-1991

The following areas were marked as "Needs Improvement":

- Is prepared and organized for daily activities
- Completes assignments on time
- Uses time wisely
- Stays on task
- Is attentive and listens carefully
- Proofreads work

Narrative comments included:

- Stephen needs to work consistently on completing homework and getting it turned in on time and pay attention.
- He is such a sweet, cooperative boy.
- Stephen is a fine boy.
- He needs to put forth more effort all of the time on academics.

Northridge Elementary School – Grade 5 – 1991-1992

Narrative comments included:

- Stephen has made some improvements; however, he is still quite forgetful about his school preparations.
- There are days when all of his notebooks have been packed for home, but the texts required for assignments are on top of his desk.
- The top of his desk is always stacked with items.

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- Stephen is not bringing home his academic work folder, so I am certain you are not clear about much of the work.
- I do not receive required correspondence forms returned from home; just excuses a lot of times.
- I find it difficult to believe that as much as he wants to be successful, his books and papers are left each day everywhere.
- Stephen has much to gain if he develops some internal discipline.

West Millbrook Middle School – Grade 6 – 1992-1993

Stephen's teachers requested a consultation with his parents. The screening forms indicated the following:

Purpose: To discuss with Dad Stephen's lack of follow-through following the conference with Mom.

Comments on Conference: The homework sheet was going to be enforced.

A classroom observation was completed by D. Morgan in January 1993. The observation revealed the following student behaviors:

- Easily distracted
- Trouble finding place
- Disorganized work habits
- Careless, doesn't complete tasks
- Short attention span
- Daydreams
- Neat appearance

Comments: Stephen was constantly distracted from the class by the artwork he was drawing. His assignment was incomplete, but he did try to complete it while the class did another assignment. The school recommended a number of interventions including praise for attention, modified instruction, modified environment, peer tutor, and a change in curriculum. Further documentation indicates that these interventions were not particularly effective.

History of Past Accommodations:

Mr. Cockburn said that his parents chose a private high school which would provide smaller classes and more individualized assistance in light of the difficulties he had experienced in both elementary and middle schools. In fact, Mr. Cockburn did not undergo a formal psych-educational or psychological assessment until the end of his junior year at Ravenscroft Upper School. This assessment, completed by Dave Filipowski, Ph.D., indicated significant difficulties with verbal memory and the processing of complex auditorily-presented information as well as several features suggestive of difficulties with sustained attention and concentration. Dr. Filipowski noted that Stephen's parents reported difficulty with multi-level commands,

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organizational skills, and task completion since an early age. Dr. Filipowski did not, however, indicate a formal diagnosis of Attention-Deficit/Hyperactivity Disorder.

Ravenscroft Upper School – September 16, 2005 – Janet D. Smith, M.Ed.

In this letter, Ms. Smith confirmed that Stephen Cockburn qualified for and received accommodations for extended time from the end of the 10<sup>th</sup> grade through the 12<sup>th</sup> grade. She indicated that he had been diagnosed with a reading disability and his testing documentation was no longer on file.

North Carolina Central University – Dr. James B. Fuller, Director Student Support Services – December 19, 2005

Dr. Fuller's letter also confirmed that Stephen Cockburn received accommodations while a student at North Carolina Central University. He was described as having good working relationships with his instructors and did not feel the need to request services through the Office of Student Support. Mr. Cockburn was described as discussing his disability with individual professors who, in turn, allowed him extended time and a quiet setting to take his exams in.

Howard University – Cypriana Bullock – Division of Student Affairs

Ms. Bullock confirmed that Mr. Cockburn was found eligible for accommodations which included extended time (double time on tests and examinations). The letter indicated that Howard University was committed to complying with the both the letter and spirit of the law, Section 504, Rehabilitation Act, and the Americans with Disabilities Act.

Association of American Medical Colleges – MCAT Program

In a letter dated January 25, 2006, Mr. Cockburn was informed that, based on the data and documentation presented, he was found eligible for extended time (1 ½) with seating in a separate room (there may be one or more individuals with similar accommodations present). The documentation was described as not supporting the request for the accommodation of double time.

**PAST ASSESSMENTS:**

**Psychological Evaluation – January 31, 1998; April 7, 1998 – Dave Filipowski, Ph.D. – Raleigh, NC**

Relevant scores:

**WAIS-III:**

- Verbal IQ = 112, 79<sup>th</sup> percentile
- Performance IQ = 97, 42<sup>nd</sup> percentile
- Full Scale IQ = 105, 63<sup>rd</sup> percentile
  
- Verbal Comprehension Index = 114, 82<sup>nd</sup> percentile
- Perceptual Organization Index = 86, 18<sup>th</sup> percentile
- Working Memory Index = 106, 66<sup>th</sup> percentile
- Processing Speed Index = 96, 39<sup>th</sup> percentile

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WJ-R:

- Broad Reading = 99, 41<sup>st</sup> percentile
- Broad Math = 112, 79<sup>th</sup> percentile
- Broad Written Language = 96, 39<sup>th</sup> percentile
- Broad Knowledge = 109, 72<sup>nd</sup> percentile

WRAML:

- Verbal Memory Index = 85, 16<sup>th</sup> percentile
- Memory Screening Index = 89, 23<sup>rd</sup> percentile

As indicated above, Dr. Filipowski recognized significant difficulties on verbal memory and problems with attention and concentration. He also indicated problems with efficient information processing. He recommended consideration for extra time on classroom tests and assignments and offered a number of other academically relevant recommendations.

**Psychological Evaluation – David Filipowski, Ph.D. – June 2005**

Relevant scores:

WAIS-III:

- Full Scale IQ = 114, 82<sup>nd</sup> percentile
- Verbal IQ = 127, 96<sup>th</sup> percentile
- Performance IQ = 98, 45<sup>th</sup> percentile
- Verbal Comprehension Index = 124, 95<sup>th</sup> percentile
- Perceptual Organization Index = 93, 32<sup>nd</sup> percentile
- Working Memory Index = 121, 92<sup>nd</sup> percentile
- Processing Speed Index = 103, 58<sup>th</sup> percentile

WMS-3:

- General Memory = 118, 88<sup>th</sup> percentile
- Auditory Immediate = 97, 42<sup>nd</sup> percentile
- Visual Immediate = 121, 92<sup>nd</sup> percentile
- Immediate Memory = 110, 75<sup>th</sup> percentile
- Auditory Delayed = 108, 70<sup>th</sup> percentile
- Visual Delayed = 125, 95<sup>th</sup> percentile
- Auditory Recognition Delayed = 110, 75<sup>th</sup> percentile
- Working Memory = 124, 95<sup>th</sup> percentile

WJ-III:

- Broad Reading = 86, 18<sup>th</sup> percentile
- Broad Math = 102, 56<sup>th</sup> percentile
- Broad Written Language = 99, 46<sup>th</sup> percentile
- Basic Reading Skills = 99, 48<sup>th</sup> percentile
- Reading Comprehension = 98, 45<sup>th</sup> percentile
- Academic Skills = 100, 51<sup>st</sup> percentile

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- Academic Fluency = 83, 12<sup>th</sup> percentile
- Reading Fluency = 80, 9<sup>th</sup> percentile
- Math Fluency = 100, 49<sup>th</sup> percentile
- Writing Fluency = 96, 39<sup>th</sup> percentile

Nelson Denny Reading Test:

- Total Percentile = 14
- Grade Equivalency = 13.4
- Vocabulary = 32, 15.0
- Comprehension = 6, 10.1
- Reading Rate = 123
- WPM Percentile = 2

Dr. Filipowski indicated that Stephen's current test performance met criteria for the DSM-IV diagnosis of Reading Disorder (315.00) and again recommended accommodations and a number of other strategies to promote his academic productivity.

**HISTORY – INTERVIEW WITH MR. COCKBURN**

Mr. Cockburn completed an adult history form prior to the assessment. He indicated that he had sought some information from his parents in order to complete early developmental history.

Mr. Cockburn was born full term via a spontaneous vaginal delivery and described as healthy. He reported developmental milestones for motor and language functions as on time. As a toddler, he was told by his mother that he was described as a very talkative and gregarious youngster. He has no early history of head injury, loss of consciousness, or seizures. He was on no prescribed medication as a youngster. He has a history of normal childhood illness. He has no history of psychiatric diagnoses, psychiatric treatment, or emotional/behavioral disorder.

Mr. Cockburn described himself as a forgetful and disorganized student in elementary school. He said that he would frequently forget his papers, his homework, and never knew what to tell his teachers. He described stress in school related to his level of organization. Mr. Cockburn mentioned that he would often pray that a teacher would not ask him a question since he was not prepared or did not have his materials.

Mr. Cockburn said that he rarely read for pleasure as a child, preferring instead to look at comic books. He said that he could count on his fingers the number of books he had read for enjoyment prior to the sixth grade.

Mr. Cockburn entered sixth grade at West Millbrook Middle School. He said that he was excited but blinded by the demands. He recalls a substantial drop in academic performance, earning D's and F's in several subjects throughout his sixth grade year. He presented a report card verifying markedly low academic performance at this time. Mr.

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Cockburn said that he was not prepared for the level of independence and organization necessary to complete his task. He described frustration in his parents and reported a number of strategies employed following parent-teacher conferences. He said that the strategies, however, were minimally successful.

Mr. Cockburn recalls frequent nights reviewing homework with his father and then forgetting to hand the homework in or take the homework to school. He said that teachers were often very generous to him and would often cut him a break because he was a nice young man, often described as exceptionally polite and his father was a lawyer, his mother a preacher.

Mr. Cockburn reported similar symptoms of distraction, disorganization, and forgetfulness as at home. He recalls the nickname "Space Cadet" given to him by his parents.

During high school, Mr. Cockburn said that his grades were better simply because he put in substantial hours to meet academic demands. He recalls being awarded extra time for the SAT's which he has taken both with and without accommodations.

Outside of school, Mr. Cockburn enjoyed playing the piano and a number of sports, including football and track. He said that he was not a particularly popular kid, but he had a good group of friends.

Following high school graduation, Mr. Cockburn entered the University of Central North Carolina where, as indicated earlier in the report, he was awarded accommodations, including extended time for testing. He described himself as a hardworking college student who began to focus more specifically on medicine. He describes medical school as a struggle, but indicates that he is able to meet academic demands through the accommodations provided at Howard University which include 100% extended time on tests and quizzes. At present, Mr. Cockburn cannot proceed in medical school until he takes the Step 1 examination. He said that he is very discouraged about the possibility of having to take this examination without the accommodations he has been found eligible for in the past.

#### **FAMILY HISTORY:**

Mr. Cockburn's mother, Joan, has completed seminary school and has been employed as a preacher. Mr. Cockburn's father, Josh, has completed an undergraduate degree in engineering from Purdue and a Juris Doctorate Degree from George Washington University. Neither parent describes a history of suspected learning disability.

Mr. Cockburn has three older siblings, a 44-year-old sister who has a history of sickle cell anemia and complications, a 43-year-old sister who is employed in the mortgage industry, and a 33-year-old brother who is employed as a financial advisor. Mr. Cockburn's family is originally from Jamaica.

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**BEHAVIORAL OBSERVATIONS:**

Mr. Cockburn arrived on time for the evaluation. He was casually dressed and appeared clean and well groomed. He presents as a friendly, pleasant young man whose affect was generally appropriate throughout the assessment. He did seem a bit anxious on timed tests. Mr. Cockburn tended to work slowly, requiring three sessions to complete the examination. He required multiple breaks and frequent switching of tasks in order to sustain his attention and performance. He was easily distracted by noises within the office suite. At times, it was necessary to repeat task directions.

Mr. Cockburn denied symptoms of anxiety or depression. His thought processes were logical and coherent. He denied psychosocial stressors that may adversely impact his performance with the exception of concern regarding his future in medical school. Overall, Mr. Cockburn appeared to put forth his best effort on evaluative measures. Hence, these results are judged to be a valid and reliable reflection of his functions on this day.

**EVALUATIVE RESULTS:****Intellectual Functions:**

Mr. Cockburn completed the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV). He earned the following scores:

**Wechsler Adult Intelligence Scale - Fourth Edition (WAIS-IV)**

	Standard Score	Percentile	Qualitative Description
Verbal Comprehension Index	118	88	High Average
Perceptual Reasoning Index	90	25	Average
Working Memory	111	77	High Average
Processing Speed	92	30	Average
Full Scale	104	61	Average
General Ability	104	61	Average

**Subtests Scaled Scores:**

<u>Verbal Comprehension</u>	SS	%ile	Ref. Group SS
Similarities	9	37	9
Vocabulary	16	98	16
Information	15	95	15

<u>Perceptual Reasoning</u>	SS	%ile	Ref SS
Block Design	7	16	8
Matrix Reasoning	12	75	12
Visual Puzzles	6	9	6

<u>Working Memory</u>	SS	%ile	Ref SS
Digit Span	13	84	13
Arithmetic	11	63	11
(Letter-Number Seq.)	19	99.9	19

<u>Processing Speed</u>	SS	%ile	Ref SS
Symbol Search	6	9	6
Coding	11	63	11

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Significant strengths: Digit Span, Vocabulary, Information

Significant weaknesses: Block Design, Symbol Search, Visual Puzzles

**Skills measured by subtests**

**Verbal Subtests**

The **Similarities Subtest** measures the ability to make associations between words.

The **Vocabulary Subtest** measures vocabulary knowledge.

The **Comprehension Subtest** measures social judgment and verbal problem solving.

The **Information Subtest** measures general fund of knowledge acquired through school and cultural experience.

**Performance Subtests**

The **Picture Completion Subtest** measures attention to detail and visual recognition of objects.

The **Block Design Subtest** measures the analysis, synthesis, and integration of visual patterns.

The **Matrix Reasoning Subtest** measures nonverbal abstract reasoning skills.

The **Visual Puzzles Subtest** measures nonverbal reasoning and the ability to synthesize abstract visual stimuli.

The **Figure Weights Subtest** measures quantitative and analogical reasoning.

**Working Memory Subtests**

The **Digit Span Subtest** measures short-term auditory memory as well as focused concentration.

The **Letter-Number Sequencing Subtest** measures short-term auditory memory as well as working memory skills.

The **Arithmetic Subtest** measures mental concentration and computational skill.

**Processing Speed Subtests**

The **Coding Subtest** measures visual associative learning as well as processing speed.

The **Symbol Search Subtest** measures visual discrimination as well as processing speed.

The **Cancellation Subtest** measures processing speed, perceptual speed, and visual selective attention.

Mr. Cockburn's Verbal Comprehension Index score of 118 falls in the upper portion of the High-Average Range of intelligence. Mr. Cockburn demonstrates superior vocabulary and general fund of information. He demonstrates a weakness in verbal abstract reasoning skills which may complicate his reading comprehension.

Mr. Cockburn's Perceptual Organization Index score of 90 falls in the lower portion of the Average Range, almost two standard deviations below expectations given his verbal score. He demonstrates significant weaknesses in nonverbal abstract reasoning and visual problem-solving skills. His performance on the Matrix Reasoning subtest, an untimed measure of spatial problem solving, fell in the upper portion of the Average Range.

Mr. Cockburn's Working Memory Index score of 111 falls at the 77<sup>th</sup> percentile in the lower portion of the High-Average Range. He demonstrated a relative weakness in processing speed with a standard score of 92 which fell at the 30<sup>th</sup> percentile, again almost two standard deviations below expectations given his Verbal Comprehension Index score.

Mr. Cockburn's resultant Full Scale IQ score and General Ability score fell in the Average Range. These scores, however, mask the significant discrepancy between verbal and nonverbal/processing speed skills.

**Academic Abilities:**

Mr. Cockburn completed the Woodcock-Johnson III (Normative Update) Tests of

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Achievement. He earned the following scores:

**Woodcock-Johnson III Normative Update Tests of Achievement**

Cluster	SS	%ile	AE	GE
Brief Achievement	105	63	>30	16.0
Total Achievement	104	61	>30	13.5
Broad Reading	98	45	18:0	12.4
Broad Math	108	70	>30	16.4
Broad Written Language	109	73	>28	17.3
Brief Reading	105	63	>30	17.6
Basic Reading Skills	101	53	>30	14.2
Brief Math	113	81	>30	>18.0
Math Calc Skills	108	70	>24	14.2
Brief Writing	113	81	>30	>18.0
Written Expression	109	73	>24	>17.8
Academic Skills	108	70	>30	16.9
Academic Fluency	87	19	12:8	7.3
Academic Apps	116	86	>30	>18.0

**Subtest Scores**

	SS	%ile	AE	GE
Letter-Word Identification	99	47	26	13.5
Reading Fluency	82	12	10:6	5.1
Calculation	114	83	>23	>18.0
Math Fluency	88	21	14:1	8.6
Spelling	106	66	>30	16.5
Writing Fluency	98	45	14:3	8.8
Passage Comprehension	112	79	>30	>18.0
Applied Problems	107	68	>30	>18.0
Writing Samples	119	90	>30	>18.0
Word Attack	103	58	>30	14.8

**Woodcock-Johnson – III (Normative Update) Tests of Achievement**

**Composites**

**Total Achievement** is a combination of the overall performance on the tests included in the Broad Reading, Math, and Written Language clusters.

**Brief Achievement** is a combination of the overall performance on the tests included in the Brief Reading, Math, and Written Language clusters.

**Broad Reading:** This cluster is a combination of Letter-Word Identification, Reading Fluency, and Passage Comprehension.

**Broad Math:** This cluster is a combination of Calculation, Math Fluency, and Applied Problems.

**Broad Written Language:** This cluster is a combination of Spelling, Writing Fluency, and Writing Samples.

**Brief Reading:** This cluster is a combination of Letter-Word Identification, Reading Fluency, and Passage Comprehension.

**Basic Reading Skills:** This cluster is a combination of Letter-Word Identification and Word Attack.

**Brief Math:** This cluster is a combination of Calculation, Math Fluency, and Applied Problems.

**Math Calculation Skills:** This cluster is a combination of Calculation and Math Fluency.

**Brief Writing:** This cluster is a combination of Spelling, Writing Fluency, and Writing Samples.

**Written Expression:** This cluster is a combination of Writing Fluency and Writing Samples.

**Academic Skills:** This cluster is a combination of Letter-Word Identification, Calculation, and Spelling.

**Academic Fluency:** This cluster is a combination of Reading Fluency, Math Fluency, and Writing Fluency.

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**Academic Applications:** This cluster is a combination of Passage Comprehension, Applied Problems, and Writing Samples.

### **Subtests**

**Letter-Word Identification** measures single letter and word identification skills.

**Reading Fluency** is a measure of reading speed, rate, and automaticity. The task requires the ability to read and comprehend simple sentences quickly.

**Calculation** measures the ability to perform mathematical computations.

**Math Fluency** measures math achievement and number facility requiring rapid and accurate solving of simple addition, subtraction, and multiplication problems (automaticity).

**Spelling** measures knowledge of spelling by responding to an oral prompt.

**Writing Fluency** measures the ability to write rapidly and with ease (automaticity). Minimal analytic attention or problem solving is required.

**Passage Comprehension** is a measure of reading comprehension and lexical knowledge in connected discourse. It is a modified close task requiring the ability to use syntactic and semantic cues.

**Applied Problems** is a measure of quantitative reasoning, math achievement, and math knowledge. It requires the ability to analyze and solve math problems and is also an aspect of fluid reasoning.

The test of **Writing Samples** measures the ability to convey ideas in writing (content) by the production of meaningful written sentences in response to a variety of task criteria.

**Word Attack** measures one's ability to apply phonic and structural analysis skills in pronouncing phonically and orthographically regular nonsense or non-words.

Mr. Cockburn's Broad Reading score of 98 falls in the average range, 20 points below expectations given his Verbal Comprehension Index score. This discrepancy is significant and is, in part, driven by a significant weakness in reading fluency. Mr. Cockburn's Reading Fluency score of 82 fell at the 12<sup>th</sup> percentile in the lower portion of the low-average range, yielding a grade equivalency of 5.1.

Mr. Cockburn's Broad Math score of 108 falls in the upper portion of the average range. This score also masks variability among subtest scores. Mr. Cockburn's Calculation skills fall in the high-average range, while his Applied Problem-Solving Skills fall solidly in the upper portion of the average range. His Math Fluency is discrepant, falling in the low-average range at the 21<sup>st</sup> percentile.

Mr. Cockburn's Broad Written Language score of 109 falls in the upper portion of the average range, reflecting a high-average score on the Writing Samples subtest, and average scores on measures of Spelling and Writing Fluency.

Mr. Cockburn's overall Academic Skills fall in the upper portion of the average range, yielding a standard score of 108, which falls at the 70<sup>th</sup> percentile. His Academic Fluency falls 1 ½ standard deviations below his Academic Skills, yielding a standard score of 87 which falls at the 19<sup>th</sup> percentile yielding a grade equivalency of 7.3.

Mr. Cockburn completed the Nelson Denny Reading Test, Form G. He earned the following scores:

### **Nelson-Denny Reading Test**

	<b>Raw Score</b>	<b>PR</b>	<b>SS</b>	<b>Grade Equiv.</b>	<b>SSE</b>
Comprehension	34	3	185	9.3	72
Extended Time Administration	58	9	199	11.1	80
Reading Rate	137(WPM)	1	75		65

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Mr. Cockburn demonstrates borderline reading comprehension under standard time, and low-average reading comprehension given extended time. His reading fluency or words per minute falls far below expectations given his age and cognitive ability. Mr. Cockburn's performance reflects clinically-significant weaknesses in multiple aspects of reading skills. His Word Attack score on the WJ-III Tests of Achievement, which fell in the average range, suggests that underlying phonemic awareness and phonological processing skills are intact. His weaknesses appear to be a function of fluency and weaknesses in higher order language skills.

#### **NEUROPSYCHOLOGICAL FUNCTIONS:**

Mr. Cockburn expresses a right hand preference. Upper extremity fine motor speed and coordination falls within grossly normal limits bilaterally.

##### **Grooved Pegboard Test**

	<b>time</b>	<b># drops</b>	<b>SS</b>	<b>%ile</b>
Dominant (RH)	70	0	87	19
Nondominant (LH)	90	1	83	13

Mr. Cockburn completed the Rey Complex Figure Test, a measure of visual construction skills which places a significant demand upon aspects of executive functioning – namely, planning and organizational skills. Mr. Cockburn's performance yielded a standard score of 79 which falls at the 8<sup>th</sup> percentile in the borderline range, significantly below expectations given his overall cognitive ability. Mr. Cockburn's constructional skills were quite strong, but his planning and organization of the figure were weak, resulting in performance well below the average range.

##### **Rey Complex Figure Test**

	<b>SS</b>	<b>%ile</b>	
Copy	79	8	
Delayed Recall	81	10	57% retained

Mr. Cockburn completed the California Verbal Learning Test – Second Edition (CVLT-II), a multi-trial list-learning task. His rate of acquisition across the five trials yielded a standard score of 108 which falls at the 70<sup>th</sup> percentile.

##### **California Verbal Learning Test – Second Edition (CVLT-II)**

	<b>SSE</b>	<b>%ile</b>
List a total trials 1-5 (mean=100)	108	70

Mr. Cockburn completed two subtests from the Wechsler Memory Scale – Third Edition (WMS-3), Logical Memory I and II and Verbal Paired Associates I and II. His performance on these subtests yielded findings in the average to high-average range.

##### **Wechsler Memory Scale - IV** **Primary Index Scores**

	<b>SS</b>	<b>%ile</b>	<b>Qualitative Description</b>
Auditory Memory	115	84	High Average

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**Subtest Scores**

	<u>Age SS</u>	<u>%ile</u>
Logical Memory I	13	84
Logical Memory II	11	63
Verbal Paired Assoc. I	13	84
Verbal Paired Assoc II	13	84

Mr. Cockburn completed two measures of verbal fluency. His performance on the Category Fluency Test yielded findings in the high-average range at the 84<sup>th</sup> percentile, while his performance on the Controlled Oral Word Association Test yielded findings in the average range at the 50<sup>th</sup> percentile.

**Word Fluency**

	<u>SS</u>	<u>%</u>	<u>repeats</u>	<u>rule breaks</u>
Categories (animals only)	115	84	0	2
Letters (F,A,S)	102	55	0	0

Mr. Cockburn completed three measures assessing aspects of executive functioning. Results of the Trailmaking Test, Parts A and B, yielded findings in the low-average to borderline range. Mr. Cockburn seemed particularly meticulous about this task which may have resulted in an exceptionally slow speed. His performance was actually worse on the Trailmaking Test, Part A, the first measure presented.

**Trailmaking Test**

	<u>SS</u>	<u>%ile</u>
Trails A	71	3
Trails B	86	18

Mr. Cockburn's performance on the Stroop Color and Word Test yielded findings in the low-average to average range. His Color-Word score of 84 fell at the 14<sup>th</sup> percentile. This subtest requires the suppression of a habituated response and is generally considered an aspect of executive functioning.

**Stroop Color and Word Test**

	<u>SSE</u>	<u>%ile</u>
Word	85	16
Color	85	16
Color-Word	84	14
Interference	96	39

Mr. Cockburn completed the Paced Auditory Serial Addition Test (PASAT), a measure of complex information processing speed and efficiency. His performance yielded findings in the average range across the four subtests.

**Paced Auditory Serial Addition Test (PASAT)**

<u>Interval</u>	<u>SS</u>	<u>%ile</u>
2.4"	107	68
2.0"	111	77

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1.6"	92	30
1.2"	93	32

**EMOTIONAL/PERSONALITY FEATURES:**

Mr. Cockburn completed a single measure of emotional functioning, the Beck Depression Inventory – Second Edition (BDI-II). His responses on this self-report objective measure of depression symptoms revealed no clinically-significant findings.

**CURRENT AND CHILDHOOD ADHD SYMPTOMS SELF-REPORT CHECKLISTS:**

Mr. Cockburn completed the Barkley's-Current and Childhood ADHD Symptoms Self-Report Scales. His childhood scale revealed a clinically-significant elevation on the Inattention scale with a standard score of 135 which fell at the 99<sup>th</sup> percentile. His responses on the current ADHD symptoms self-report scale yielded a moderate elevation on the Inattention scale with a standard score of 118, 88<sup>th</sup> percentile.

<b>Current ADHD Symptoms Self-Report</b>	<b>SS</b>	<b>%ile</b>
Inattention	118	88
Hyperactivity	89	23
Total	104	61
<b>Childhood ADHD Symptoms Self-Report</b>		
Inattention	135	99
Hyperactivity	91	27
Total	114	83

**SUMMARY AND RECOMMENDATIONS:**

Stephen Harris Cockburn is a 28-year-old single African-American young man referred for neuropsychological assessment subsequent to a history of academic difficulties and following the recent denial of accommodations on the United States Medical Licensing Examination, Step 1. Mr. Cockburn is a second year medical student at Howard University and is currently on hiatus until he passes the Step 1 examination.

Mr. Cockburn's birth and medical histories are unremarkable. He has no history of head injury, loss of consciousness, or seizures. Mr. Cockburn has no history of psychiatric diagnosis, psychiatric disorder, or psychiatric intervention. He is on no prescribed medications at this time.

Mr. Cockburn was raised with his parents in North Carolina, where he attended public elementary and middle schools and a private high school. He has undergone two past psychological evaluations, the most recent of which was completed in 2005 and revealed a DSM-IV diagnosis of Reading Disorder (315).

Mr. Cockburn has been found eligible for accommodations at his private high school, at the North Carolina Central University where he completed his undergraduate work, and at Howard University Medical School where he is afforded 100% extended time on tests.

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Stephen Harris Cockburn

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Mr. Cockburn has also been found eligible for accommodations on the SAT's and MCAT's.

Mr. Cockburn's denial of accommodation from the National Medical Board cited the absence of early school records documenting academic difficulties and absence of documentation demonstrating that he experiences a substantial limitation in a major life activity compared to most people.

Upon interviewing Mr. Cockburn and obtaining his early academic history, I requested that he obtain early school records. His early school records are replete with comments indicating significant inattention, distractibility, failure to complete class work, and failure to complete assignments. These comments are offered in the context of frequent indications that he was perceived as a bright and extremely polite young man with no behavioral problems. His academic performance actually deteriorated so substantially in the transition from elementary to middle school that teachers implemented a number of interventions which were described as minimally successful. He actually earned below-average to failing marks in several subjects upon transitioning to middle school.

Mr. Cockburn said that his parents chose a private high school as a means to provide a smaller class size and greater individual instruction. Despite the abundance of comments from teachers throughout elementary school, a diagnosis of Attention-Deficit/Hyperactivity Disorder was apparently not considered. Dr. Filipowski indicated difficulties with attention and a history of difficulty with task completion in his 1998 assessment. He did not, however, indicate a formal diagnosis.

In my opinion, Mr. Cockburn's history is highly consistent with an Attention-Deficit/Hyperactivity Disorder – Predominantly Inattentive Type. His symptoms have been evident since early elementary school and have resulted in significant academic impact or impact upon learning, a major life activity. His compensation has included the need to seek formal accommodations throughout his academic history, dedicate a substantial amount of time to his studies, and seek significant tutorial support.

I have also indicated a diagnosis of Reading Disorder as well. Mr. Cockburn has no history of deficits in phonemic awareness and phonological processing. His reading fluency, however, falls well below average and substantially below average, as evidenced by his reading rate on the Nelson Denny Reading Test, which fell at the 1<sup>st</sup> percentile.

Mr. Cockburn is a bright young man with verbal cognitive skills solidly in the high-average range of intelligence and select verbal cognitive skills extending into the superior range. He demonstrates significant discrepancies in academic fluency, reading fluency, reading comprehension measured by the Nelson Denny Reading Test, organizational and planning skills as measured by the Rey Complex Figure Test, and relative weaknesses in processing speed, as indicated on measures of executive functioning. ADHD checklists support clinically-significant symptoms of inattention.

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Based on the new information contained within this report, it is recommended that Mr. Cockburn request reconsideration of accommodations on the USMLE Step 1 examination. Based on these findings, the following recommendations are offered:

1. It is recommended that Mr. Cockburn seek consultation with his physician regarding the advisability of a stimulant trial. Stimulant medication may be helpful in reducing inattention and distractibility.
2. The following accommodation is recommended on the USMLE Step 1:
  - Extended time, 100%, given the severity of deficits and positive benefit from past accommodations.
3. Mr. Cockburn will benefit from the following strategies to promote executive functioning and organizational skills:
  - Concrete descriptions of appropriate behaviors in a specific situation and rehearsal of these behaviors.
  - Explaining in a step-to-step fashion the difference between new situations or demands and old ones.
  - Rehearsing alternative responses to each specific situation.
  - Increasing organization/planning skills in list making and use of visual cues and graphic organizers (daily/weekly calendars).
  - Monitoring assignments and reviewing poor performance by emphasizing differences between what is expected and what is produced.
  - Provide liberal positive feedback that rewards effort and a desire to improve.
4. The following books may be helpful regarding ADHD:
  - Stephen Covey, 7 Habits of Highly-Effective People (Simon and Schuster)
  - Hallowell & Ratey, Delivered from Distraction
  - Barkley, R. A., AD/HD and the Nature of Self Control
  - Goldberg, E., The Executive Brain: Frontal Lobes and the Civilized Mind
  - www.CHADD.org (Children and Adults with Attention-Deficit/Hyperactivity Disorder)
  - www.help4adhd.org
5. Mr. Cockburn may find the following publications resourceful in helping to improve his executive functioning skills:

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- Executive Skills in Children and Adolescents by Peg Dawson and Richard Guare
- Executive Function in Education by Lynn Meltzer, 2007

6. Mr. Cockburn may wish to pursue additional information through CHADD, Children and Adults with Attention-Deficit/Hyperactivity Disorder. For information call 800-233-4050 or see [www.CHADD.org](http://www.CHADD.org). LDonline is a great resource for children with learning disabilities and attention disorders. LDonline is produced by WETA of Washington D.C. and can be found at [www.LDonline.org](http://www.LDonline.org).

7. The executive function skills most relevant to college include time management, planning, and self-advocacy. The following suggestions may be helpful.

- **Realize that time management is a myth.** No matter how organized we are, there are always only 24 hours in a day. Time doesn't change. All we can actually manage is ourselves and what we do with the time we have.
- **Find out where you're wasting time.** Many of us are prey to time-wasters that steal time we could be using much more productively. What are your time-bandits? Do you spend too much time Net surfing, reading email, or making personal calls?
- **Create time management goals.** Remember, the focus of time management is actually changing your behaviors, not changing time. A good place to start is by eliminating your personal time-wasters.
- **Implement a time management plan.** The objective is to change your behaviors over time to achieve whatever general goal you've set for yourself, such as increasing your productivity or decreasing your stress.
- **Use time management tools.** Whether it's a Day-Timer or a software program, the first step to physically managing your time is to know where it's going now and planning how you're going to spend your time in the future. A software program such as Outlook, for instance, lets you schedule events and can be set to remind you of events in advance, making your time management easier.
- **Prioritize ruthlessly.** You should start each day with a time management session prioritizing the tasks for that day and setting your performance benchmark.
- **Learn to delegate and/or outsource.** For effective time management, you need to let other people carry some of the load.
- **Establish routines and stick to them as much as possible.** While crisis will arise, you'll be much more productive if you can follow routines most of the time.
- **Get in the habit of setting time limits for tasks.** For instance, reading and answering email can consume your whole day if you let it. Instead, set a limit of one hour a day for this task and stick to it.
- **Be sure your systems are organized.** Take the time to organize a file management system.
- **Don't waste time waiting.** Always take something to do with you, such as a report you need to read, a checkbook that needs to be balanced, or just a blank pad of paper that you can use to plan your next marketing campaign. Technology makes it easy to work wherever you are; your PDA and/or cell phone will help you stay connected.

-Time Management, By Susan Ward, About.com

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8. At this point, there is no need for further neuropsychological assessment. If the need for further consultation arises, I will be happy to provide it.

If you have any questions regarding this assessment, please feel free to contact me.



Vincent P. Culotta, Ph.D., ABN  
Licensed Psychologist

Diplomate - American Board of Professional Neuropsychology  
Fellow - American College of Professional Neuropsychology

**EXAMINER QUALIFICATIONS:** Dr. Culotta is a Board Certified Neuropsychologist and Clinical Psychologist. Dr. Culotta holds a Doctorate Degree in Clinical Psychology from the University of Memphis, an APA approved Clinical Psychology Program. He has completed additional training in the Neurosciences. He is a fellow of the American College and Professional Neuropsychology and a Diplomat of the American Board of Professional Neuropsychology. Dr. Culotta is a licensed psychologist in the states of Maryland and Virginia. He is a member of the International Neuropsychological Society, the National Academy of Neuropsychology, and the Division of Clinical Neuropsychology. Dr. Culotta has over 20 years of post-graduate experience and specializes in the neuropsychological assessment of children and adults.



Sue Pellescki, M.S.  
Psychology Associate

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# **EXHIBIT 22**

Steven G. Zecker, Ph.D.  
Clinical Psychologist  
2103 Ridge Avenue  
Evanston, IL 60201

November 8, 2009

Cathy Farmer, Psy.D.  
National Board of Medical Examiners  
Disability Services  
3750 Market Street  
Philadelphia, PA 19104

Dear Dr. Farmer:

I am writing to you concerning the materials that were submitted to your office by Stephen H. Cockburn (USMLE ID# 5-220-777-6), who is currently a medical student at the Howard University College of Medicine. Mr. Cockburn is requesting special testing accommodations on Step 1 of the United States Medical Licensing Examination (USMLE). Mr. Cockburn states that he has been diagnosed with Learning Disabilities (LD; specifically Reading Disorder and Writing Disability), and that because of these disabilities he requires an extended-time (double time) testing accommodation in order to be able to successfully complete the Step 1 examination. Mr. Cockburn also indicates on one of his personal statements that he has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), but his formal request does not state that he is seeking accommodations because of this disability.

In support of his request for testing accommodations, Mr. Cockburn provided substantial documentation for review which included 1) a '*Step 1 and Step 2 Clinical Knowledge Applicant's Request for Test Accommodations*' form, dated April 21, 2009; 2) three undated personal statements in which Mr. Cockburn describes the history of the difficulties his disabilities have caused him; 3) a '*Psychological Evaluation*' completed in January and April 1998 by D. Filipowski, Ph.D., a licensed psychologist in Raleigh, North Carolina; 4) a '*Psychological Evaluation*' conducted in June 2005 by Dr. Filipowski; 5) a '*Psychological Evaluation Addendum*' from Dr. Filipowski, dated June 16, 2005; 6) a '*Neuropsychological Evaluation*' conducted in September and October 2009 by V. P. Culotta, Ph.D., ABN, a licensed psychologist, and S. Pellescki, M.S. a psychology associate, both with Neurobehavior Associates in Columbia, Maryland; 7) an April 23, 2009 letter to Mr. Cockburn from M. Fuentes, Case Coordinator, Disability Services at the NBME, in which Ms. Fuentes indicates that the processing of Mr. Cockburn's request for accommodations has begun; 8) an November 3, 2009 letter to Mr. Cockburn from J. Orlemann, Case Coordinator, Disability Services at the NBME, in which Ms. Fuentes indicates that the processing of Mr. Cockburn's reconsideration request for accommodations has begun; 9) a 'USMLE Certification of Prior Test Accommodations' form, completed on April 16, 2009 by S. N. Hassan, M.D., Associate Dean for Academic Affairs at the Howard University College of Medicine; 10) a May 29, 2009 letter from you to Mr. Cockburn in which you indicate that his initial accommodations request was incomplete; 11) an August 31, 2009 letter from you to Mr. Cockburn, in which you indicate that his initial request for

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accommodations has been denied; 12) a January 25, 2006 letter to Mr. Cockburn from M. Haight, M.Ed., Consultant, Accommodated Testing at the Association of American Medical Colleges in Iowa City, Iowa, in which she indicates that Mr. Cockburn has been approved to receive up to time and one-half and testing in a separate room on the MCAT examination; 13) a January 13, 2009 *'Accommodation Memorandum'* to Howard University faculty from C. Bullock, Administrative Assistant, Division of Student Affairs at Howard, informing them that Mr. Cockburn has qualified for a double-time accommodation on tests at the school; 14) a December 19, 2005 *'To whom it may concern'* letter from Dr. J. B. Fuller, Director, Student Support Services at North Carolina Central University in which he indicates that Mr. Cockburn did not utilize services through his office, although he did individually arrange for informal testing accommodations with his professors; 15) a July 13, 2009 letter to the NBME from S. Sutherland, Director, Office of Curriculum at Howard University, who indicates that Mr. Cockburn has been accommodated for the past two years on all tests and exams at the school; 16) a September 16, 2005 *'To whom it may concern'* letter from J. D. Smith, M.Ed., Academic Skills Coordinator at Ravencroft School in Raleigh, North Carolina who indicates that Mr. Cockburn was accommodated between tenth and twelfth grades on all tests and exams at the school; 17) school records including a) a *'Kindergarten Progress Report'* and grade progress reports from the Wake County Public School System (1987-1992), b) report cards from West Millbrook Middle School (1993-1995), c) a transcript from Ravencroft School (1995-1999), d) a *'College Admissions Test Record'* from Ravencroft School, and e) an *'AMTAS Application Report—2007 Entering Class'* form.

In Mr. Cockburn's personal statements he indicates that he has struggled with reading throughout his life, although he was not diagnosed until he was in 11th grade. He writes that test performance "has always been a major struggle". He indicates that when he is provided with extended time on tests he is able to complete them, but without this accommodation his slow reading precludes him from being able to finish. Mr. Cockburn adds that he took the MCAT exam three times without accommodations and scored poorly (below 20) each time. However, with a time and one-half accommodation he was able to improve his score by 12 points the fourth time he took the MCAT. Mr. Cockburn apparently considers this to be compelling evidence in support of his accommodations request, but I note that nearly two years passed between his 3rd and 4th attempts at the test, and that because of this lengthy gap, many other factors could have also influenced his test performance. Unfortunately, Mr. Cockburn provides very little evidence in his statements to support his claim that he has had a lifelong reading disability and writing disability or that these claimed disabilities are currently resulting in a significant impairment in functioning.

Mr. Cockburn was first evaluated in 1998 by Dr. Filipowski. He was 17 years old at the time of testing. Dr. Filipowski's testing indicated that Mr. Cockburn's mental ability as measured by the Wechsler Adult Intelligence Scale-III (WAIS-III) placed him in the Average range overall (Full Scale IQ = 105). Verbal IQ (112) was significantly stronger than Performance IQ (97). Significantly weaker Perceptual Organization (86) than Verbal Comprehension (114) scores were noted. Working Memory and Processing Speed index scores were both Average. Twelve of 13 individual subtest scores were Average or higher, the exception being Picture Completion, on which Mr. Cockburn obtained a below average score (scale score=6). Dr. Filipowski administered numerous achievement subtests from the

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Woodcock-Johnson-Revised Edition (WJ-R). All nine subtests (including two reading measures) and each of the four cluster scores that derive from them were Average or better. Dr. Filipowski also administered the Wide Range Assessment of Memory and Learning (WRAML), the results of which indicated that Mr. Cockburn possesses Low Average to Average memory abilities, with somewhat stronger visual as opposed to verbal memory. Although no scores were reported, Mr. Cockburn also completed the Conners' Continuous Performance Test (CCPT), the results of which were within normal limits. In his diagnostic conclusions, Dr. Filipowski does not provide a diagnosis of any disability; rather, he states that Mr. Cockburn has "some problems with the efficient processing of information". I concur with Dr. Filipowski's conclusion that Mr. Cockburn was not disabled at the time of this evaluation. I also note that in his request for accommodations, Mr. Cockburn incorrectly characterizes this evaluation as having resulted in diagnoses of both Reading Disorder and Writing Disorder.

Dr. Filipowski also conducted Mr. Cockburn's second evaluation in 2005, at which time he was a 24-year old college graduate who was working as a pharmacy technician. Dr. Filipowski's 'Background Information' section conforms that Mr. Cockburn had received an extended-time accommodation on the SAT exam and throughout college (despite the fact that he had never been formally diagnosed with any disability). Intelligence testing with the WAIS-III indicated that Mr. Cockburn's overall ability was High Average (114) and that the discrepancy between Verbal IQ and Performance IQ had nearly doubled over the seven-year span between evaluations. All 4 index scores and each of the 13 individual subtest scores were Average or better. Testing with the Wechsler Memory Scales (WMS) yielded much higher scores than did the memory testing conducted during the first evaluation; all 17 subtest scores were at least Average and most were above average. Achievement testing with the Woodcock-Johnson-III (WJ-III) indicated that 10 of the 11 subtests administered resulted in Average scores or higher; the exception was Reading Fluency, which yielded a Low Average score. Similarly, 9 of the 10 cluster scores on the WJ-III were Average, while the tenth (Academic Fluency) was Low Average. Finally, testing with the Nelson-Denny Reading Test (NDRT) resulted in an Average score on timed Vocabulary, but below average scores on timed Comprehension and Reading Rate. The reported NDRT scores were based on college-senior-based grade norms, which provide an underestimate of achievement relative to same-age peers from the general population. Importantly, the 'Addendum' to this evaluation submitted by Dr. Filipowski indicates that Mr. Cockburn's age-based scale score on the NDRT Comprehension subtest places him near the middle of the Average range. Attention testing with the CCPT-II again yielded results that were within the limits of the normal range. Based on these results, Dr. Filipowski diagnoses Mr. Cockburn with Reading Disorder, a decision that was apparently heavily based on his low scores on measures of timed reading (despite Average scores on untimed reading tests). In my opinion, there is insufficient data available from this evaluation to support such a diagnosis. Dr. Filipowski is essentially basing a diagnosis on the results of two tests, one of which (NDRT) did not have an appropriate normative sample to yield fully meaningful scores. All other scores are at or above the Average range. My interpretation of the results obtained in this evaluation is that Mr. Cockburn displays some unevenness in his profile, but that most test results fall within the Average or better range, findings that are inconsistent with the diagnosis of a disability.

Mr. Cockburn's most recent evaluation was conducted less than two months ago by Dr. Culotta and Ms. Pellescki. Unlike Dr. Filipowski, these evaluators provide a rather detailed

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'Background' section in the report that includes a summary of old school records. Nearly two pages of the report are devoted to an overview of these past school reports, none of which mentioned reading or writing as areas of weakness for Mr. Cockburn. Rather, most of the comments and descriptors mention Mr. Cockburn's lack of organization, inefficient use of time, and lack of discipline. Intelligence testing with the WAIS-IV yielded Average overall mental ability (Full Scale = 104), with significantly stronger Verbal Comprehension (118) than Perceptual Reasoning (90) abilities. Working Memory was High Average (111), while Processing Speed fell within the Average range (92). Eight of the 11 subtests yielded Average or higher scores, while three (Symbol Search (6), Visual Puzzles (6) and Block Design (7)) were Low Average. Achievement testing with the WJ-III resulted in generally Average or better scores; two of the ten subtests (Math Fluency and Reading Fluency) fell in the Low Average range. Similarly, 12 of the 13 Cluster scores were Average or better; the exception was Academic Fluency, which was Low Average (87). Dr. Culotta and Ms. Pellescki also administered the NDRT, the results of which indicated that Mr. Cockburn obtained below average scores on both the standard-time and extended-time administration of the Comprehension subtest using unspecified norms. However, I note that the scale scores reported (185 and 199 for the standard- and extended-time administrations, respectively) are within the range that is considered Average. A range of neuropsychological tests was also administered; results were mixed, with typically Average or better scores noted on tasks assessing learning and memory and Average or lower scores observed on executive functioning tasks. Mr. Cockburn was also asked to complete rating scales assessing his attentional behavior both as a child and currently; his childhood report indicated significantly elevated scores in Inattention, while his current symptoms fell within the normal range. Based on the results of the testing, Mr. Cockburn's evaluators diagnosed him with both ADHD-Predominantly Inattentive Type and Reading Disorder. In support of the ADHD diagnosis they point to numerous comments made by elementary teachers that pointed to problems with inattentiveness, disorganization and failure to complete assignments. I concur that a number of these comments were made, yet the difficulties Mr. Cockburn was having were apparently never considered severe enough to warrant a screening or evaluation. I also note that this 2009 evaluation contained no objective measure of attentional functioning, but the 1998 and 2005 evaluations did and they yielded results that were inconsistent with an ADHD diagnosis. I also note that Mr. Cockburn's self-assessment of his current attentional functioning yielded results that were within normal limits and thus inconsistent with an ADHD diagnosis. With respect to the diagnosis of Reading Disorder, Mr. Cockburn's evaluators acknowledge that the extensive school documentation they reviewed never suggested any difficulties in early reading, which would have been expected given that Reading Disorder is a neurodevelopmental condition with an onset in childhood. They appear to base the diagnosis of a reading disability extensively on the NDRT results, which according to the scale scores provided, were within the range considered Average. The fact that multiple other reading scores were Average also calls the diagnosis into question. In my professional opinion, the evidence in support of either diagnosis was insufficient. I believe that Mr. Cockburn's performance in the evaluation is best characterized as uneven, with clear strengths and weaknesses identified. Such results are not uncommon, and by itself an uneven profile is not sufficient to support a diagnosis of a disability. What is needed to support the diagnosis of a disability is a consistent pattern of results indicating a) that an individual is functioning at a below average level in comparison to same-age peers from the general population and b) that this results in a significant impairment in functioning, and in my opinion

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Mr. Cockburn's evaluators failed to demonstrate either of these.

The other information provided for my review did little to support Mr. Cockburn's claim that he has disabilities that require accommodation on the Step 1 examination. Documentation submitted indicates that Mr. Cockburn has received accommodations since he was in tenth grade. However, my review of his diagnostic history indicates that his 1998 evaluation did not result in any diagnosis being given and thus did not warrant such accommodations. The 2005 and 2009 evaluations did result in a diagnosis of Reading Disorder, but as my review has indicated, the evidence for this diagnosis was lacking in both cases. Past school records (which were discussed previously in the context of the 2009 evaluation) never mentioned reading as an area of concern. The concerns that were stated focused on attentional and motivational issues. Report cards from middle school show mostly grades of 'B' and 'C', with some lower grades noted. Mr. Cockburn's high school transcript indicates that he was mostly a 'B/C' student who graduated with a 2.55 grade-point average (GPA). In college he was a mostly 'A/B' student, according to his *AMCAS Application Report*. Standardized test scores (SAT and ACT) were Average on each administration. Mr. Cockburn apparently took the SAT three times in 1998 and 1999, and scored similarly on each occasion. It appears that the first time he took the SAT (March 1998), Mr. Cockburn did not receive accommodations and he scored within the range that is considered Average. Mr. Cockburn never indicates that the ACT was taken with accommodations, and his score on this test (taken in February 1998) fell at the lower end of the Average range. Mr. Cockburn took the MCAT exam four times, the first three without accommodations. On the last administration (on which he received a 150% time accommodation), he scored significantly better than he had on the first three attempts. However, I note that two years had passed since his last attempt at the test, and during that time Mr. Cockburn apparently took post-baccalaureate classes at the University of North Carolina to better prepare him for the exam. Thus, his improvement on the test is likely attributable to multiple factors and not simply to having received accommodations.

To summarize, my careful review of the documentation provided by Mr. Cockburn for review does not demonstrate that he at this time has a disabling condition that qualifies him for accommodations under the Americans with Disabilities Act as amended. His 2009 evaluation failed to provide adequate support for his claimed Reading Disorder and ADHD diagnoses. Mr. Cockburn failed to document any history of reading or writing impairment in childhood, as would be expected with neurodevelopmental disorders. In conclusion, after having considered all of the documentation provided for my review, I recommend that you deny Mr. Cockburn's request for an extended-time (double time) accommodation on the USMLE Step 1 exam. Please feel free to contact me if I may provide you with any additional information regarding Mr. Cockburn's request for USMLE accommodations.

Sincerely,

Steven G. Zecker, Ph.D.  
Clinical Psychologist

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Illinois Registration 071-0035

# **EXHIBIT 23**



1043524 5-220-777-6  
Reconsideration Denial-De

National Board of Medical Examiners  
3750 Market Street  
Philadelphia, PA 19104-3102

215-590-9500 phone  
www.nbme.org

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December 9, 2009

Stephen H. Cockburn  
2544 ross rd. apt 103  
Silver Spring, MD 20910

RE: USMLE Step 1

USMLE ID#: 5-220-777-6

Dear Mr. Cockburn:

We have thoroughly reviewed your request for reconsideration of our decision regarding test accommodations for the United States Medical Licensing Examination (USMLE) Step 1 and accompanying material in accordance with USMLE guidelines for examinees with disabilities. Your request was reviewed within the framework of the Americans with Disabilities Act (ADA) as amended by the ADA Amendments Act of 2008 (together, "ADA"). We consulted an expert in disorders of learning and Attention-Deficit/Hyperactivity Disorder (ADHD) to assist us in reviewing the documentation.

In an undated letter received on October 30, 2009, you state, *"Although I was not diagnosed with a reading disorder until after I completed college, my original psychologist diagnosed me without a complete history of my early academic career. My current psychologist Dr. Culotta, requested that I retrieve my academic records from kindergarten through the eighth grade. After administering a new psychological evaluation and reviewing my grades as well as teacher comments from Kindergarten- grade 8, Dr. Culotta informed me that I have Attention-Deficit/Hyperactivity disorder-predominantly inattentive type (314.00) as well as a reading disorder (315.00). These two disorders have a synergistic effect putting me at a great disadvantage with my peers."*

Received with your request for reconsideration was an October 2009 report of Neuropsychological Evaluation in which Vincent P. Culotta, Ph.D. and Sue Pellescki, M.S. conclude, *"In my opinion, Mr. Cockburn's history is highly consistent with an Attention-Deficit/Hyperactivity Disorder - Predominately Inattentive Type. His symptoms have been evident since early elementary school and have resulted in significant academic impact or impact upon learning, a major life activity. His compensation has included the need to seek formal accommodations throughout his academic history, dedicate a substantial amount of time to his studies, and seek significant tutorial support."* Your evaluators report, *"His early school records are replete with comments indicating significant inattention, distractibility, failure to complete class work, and failure to complete assignments. These comments are offered in the context of frequent indications that he was perceived as a bright and extremely polite young man with no behavioral problems."*

Despite these teacher comments, the North Ridge Elementary School records that you provided show that by the end of fifth grade, you earned grades of B in Spelling, Mathematics, Social Studies, Science, and Health, and As in Reading and Language. Your performance was rated as "Satisfactory" in all academic skill and conduct areas with the exception of Reading Comprehension, Music, Art, Dance/drama, and "Exhibits effort/desire to learn," where you earned a rating of "Commendable." No documentation was provided showing grade retention, special education evaluation or services.

In a report entitled "Focus of Concerns/Screening" conducted when you were in the sixth grade at West Millbrook Middle School, your teacher, Joyce Walker, reports the first parent conference/contact was made in October 1992 to discuss your *"...lack of progress and to offer suggestions on ways to improve."* Areas of concern were described as *"lack of organization, lack of focused attention."* Contained within the report are your performances on a group standardized test, the CAT, showing overall average range performances in Reading, Language and Math in 1990, 1991, and 1992. The report signed March 25, 1993 by four Committee members contains no recommendation for further evaluation or special education services but states, *"Conference with parents (Mrs. Miller + Mrs. Hill) suggest that parents may wish to pursue [sic] family Counseling [sic]."* The outcome of this recommendation was not provided for our review.



According to your sixth grade report card, you obtained final grades in June 1993 of one A, two Bs, one C, and four Ds. By the end of eighth grade in June 1995, your final grades were two Bs and six Cs. As noted in my letter of August 31, 2009 letter, your performances on timed nationally normed standardized tests administered in high school, including the PSAT, SAT, and ACT were well within the average range compared to same grade peers. Overall, these data do not demonstrate impaired functioning that substantially limited your ability to read or learn relative to most people.

In his 2009 report, Dr. Culotta states, *"Despite the abundance of comments from teachers throughout elementary school, a diagnosis of Attention Deficit/Hyperactivity Disorder was apparently not considered. Dr. Filipowski indicated difficulties with attention and a history of difficulty with task completion in his 1998 assessment. He did not, however, indicate a formal diagnosis."*

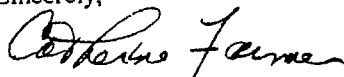
I concur with Dr. Culotta's observation that you were not previously diagnosed with ADHD. However, according to the documentation provided, Dr. Filipowski administered the *Conners' Continuous Performance Test (CPT)* in 1998 and reported, *"On the CPT, a computerized administered visual tracking task utilized to measure sustained attention and concentration, Stephen's overall index was within normal limits; however, he did exhibit two types of errors which are typically not seen in the general student population."* Dr. Filipowski recommended, among other things, *"...Stephen and his parents may want to give some consideration to the gathering of additional data from his current teachers. Once that data is compiled, if the results provide additional information regarding the presence of attentional problems, those results and the present report should be shared with his family physician to determine whether or not a pharmacological intervention will be helpful."* The outcome of this recommendation was not provided for our review. Nevertheless, in his June 2005 report of Psychological Evaluation, Dr. Filipowski reports that he administered the *Conners' Continuous Performance Test, Second Edition (CPT-II)*. He states, *"An analysis of the inattention, impulsivity and vigilance measures reveals that they are all within normal limits suggesting that if any attentional difficulties are present they do not fit any classic or typical patterns of attention problems."* (Emphasis original) Thus, it appears that Dr. Filipowski recommended monitoring and gathering of information about your attention and assessed for attention and concentration problems in 1998 and 2005 using objective measures (*CPT* and *CPT-II*). Neither evaluation resulted in a diagnosis of Attention Deficit/Hyperactivity Disorder.

Dr. Culotta states in his 2009 report, *"I have also indicated a diagnosis of Reading Disorder as well. Mr. Cockburn has no history of deficits in phonemic awareness and phonological processing. His reading fluency, however, falls well below average and substantially below average, as evidenced by his reading rate on the Nelson Denny Reading Test, which fell at the 1<sup>st</sup> percentile."*

Reading Rate on the *Nelson Denny Reading Test (NDRT)* is not considered by experts to be a reliable measure of reading efficiency as it is determined on the basis of a single, one-minute sample of words-per-minute. Dr. Culotta reports your *NDRT* performances as percentile scores which are based on grade norms and compare your performances to a select group of college educated peers. *NDRT* scale scores are derived from the pooled standardization sample, a group whose aggregate characteristics more closely resemble the general population, the appropriate frame-of-reference when assessing disability under the ADA. Your *NDRT* timed Comprehension scale score of 185 is well within the average range compared to the pooled standardization sample where the mean is 200 and the standard deviation is 25.

The conclusions of your evaluators notwithstanding, your documentation does not demonstrate that you are currently substantially limited in a major life activity relative to most people or that additional testing time is an appropriate modification of your Step 1 examination. Therefore, after a thorough review of all of your documentation, I must inform you that we are unable to provide you with the requested accommodations.

Sincerely,



Catherine Farmer, Psy.D.  
Manager, Disability Services  
ADA Compliance Officer, Testing Programs